

Rapscallion Table & Tap  
Restaurant Use Special Permit Decision # 09/08/15 - 456  
5 Strawberry Hill Road  
November 2, 2015

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**Board of Selectmen**

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**TOWN OF ACTON**

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**DECISION**

# 09/08/15 - 456

**Rapscallion Table & Tap**

Restaurant Use Special Permit  
5 Strawberry Hill Road  
November 2, 2015

**GRANTED with CONDITIONS**

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request of Mr. Peter Daniels, of 1 Strawberry Hill Road, MA (hereinafter the Applicant/ Owner), received September 8, 2015. The Applicant is requesting a Restaurant Use Special Permit pursuant to Section 3.5.5 of the Zoning Bylaw (hereinafter the Bylaw) and the Special Permit Rules and Regulations (hereinafter the Rules) for property located at 5 Strawberry Hill Road Acton, MA owned by Strawberry Hill LLP at 1 Strawberry Hill Road, Acton, MA. The property is shown on the Acton Town Atlas as map E4-61 (hereinafter the site).

The Board considered the request at a duly noticed public hearing on November 2, 2015. Board members Katie Green (Chair), Peter J. Berry, Janet K. Adachi, and Frances J. Osman, Chingsung Chang were present.

The minutes of the hearing and submissions upon which this Decision is based on may be found in the Town Clerk's office or the Board's office at the Acton Town Hall.

## **1. EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

- 1.1 An application form for a Use Special Permit received, September 8, 2015;
- 1.2 Certified Abutters List;
- 1.3 Supplemental Information:
  - Site Development Plan #7/30/76-116 provided by the Planning Department
  - Rapscallion Septic System Profile provided by the Health Department
- 1.4 Interdepartmental and other communication:
  - Planning Department Memo dated October 27, 2015;
  - Building Department Memo dated September 15, 2015;
  - Fire Department Memo dated September 15, 2015;
  - Building Department Memo dated October 20, 2015;
  - Health Department Memo dated September 8, 2015.

**Exhibits 1.1 through 1.2 are referred to herein as the Plan.**

## **2. FINDINGS AND CONCLUSIONS**

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site is located in the Limited Business (LB) Zoning District.
- 2.2 The Site has been a restaurant location since at least the 1970's.
- 2.3 The existing 30-space parking lot is pre-existing nonconforming. It exceeds the number of parking spaces that would be allowed under the Bylaw (section 5.4.6.2) today.
- 2.4 The Bylaw in section 6.3.1.10 requires at least one parking space for each three seats in a restaurant.
- 2.5 The Applicant is proposing to add an additional 15 seats for a total of 90 seats. 90 seats is the maximum number of potential seats in accordance with the Bylaw based on the minimum parking spaces to seating ratio.
- 2.6 The restaurant use is pre-existing nonconforming because there is no restaurant use special permit on record for this location. Under the Bylaw, restaurants need a use special permit from the Board of Selectmen for seating over 10. The restaurant currently has 75 permitted seats per Board of Health approvals based on the septic system's capacity.
- 2.7 The Board has received comments from various Town Departments, which are listed in Exhibit 1.4 above. These comments were considered by the Board in its deliberations,

were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.

- 2.8 The proposed use is consistent with the Master Plan; is in harmony with the purpose and intent of this Bylaw; will not be detrimental or injurious to the neighborhood in which it is to take place; is appropriate for the site in question; and complies with all applicable requirements of this Bylaw.

### **3. BOARD ACTION**

Therefore, the Board voted unanimously on November 2, 2015 in favor of GRANTING the Restaurant Use Special Permit # 09/08/15 - 456 for a total of 90 seats, subject to the following Conditions and Limitations.

### **4. CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render the Restaurant Use Special Permit granted with this Decision null and void, without force and effect, and shall constitute grounds for revocation of this Restaurant Use Plan Special Permit. The Town of Acton may elect to enforce compliance with this Use Special Permit using any and all powers available to it under the law.

- 4.1 This Restaurant Use Special Permit is limited to 90 seats or such lesser number of seats as the Board of Health and Building Commissioner may determine from time to time.
- 4.2 The Applicant shall meet and continue to adhere to all requirements of the Town Bylaws.
- 4.3 Pre-existing nonconformities on the Site shall not increase without the requisite permits or special permits.
- 4.4 Prior to increasing the seat number above 75, the Applicant shall:
  - 4.4.1 Provide for the Building Department's review a seating arrangements plan that ensures adequate space for accessibility for disabled persons and for safe egress in case of an emergency, and shall have receive approval of such plan. The Applicant shall comply with the approved seating arrangements plan.
  - 4.4.2 Obtain a sprinkler system review by a fire protection engineer and submit same to the Fire Department.
  - 4.4.3 Have received a permit from the Board of Health for an increase in the number of seats.
  - 4.4.4 Pay in full all taxes, penalties and back charges resulting from the non-payment of taxes, if any.
- 4.3.1 Record this Decision at the Middlesex South District Registry of Deeds.

### **5. LIMITATIONS**

The authority granted to the Applicant under this Restaurant Use Special Permit is limited as follows:

- 5.1 The foregoing required conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 5.2 This Restaurant Use Special Permit applies only to the Site identified in this Decision.
- 5.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 5.4 The Board hereby reserves its right and power to modify or amend terms and conditions of this Restaurant Use Special Permit with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.

## **6. APPEALS**

Any person(s) aggrieved by the issuance of this Restaurant Use Special Permit has the right to appeal pursuant to M.G.L., Ch. 40A, §. 17 and shall file such appeal within 20 days after the filing date of this Decision with the Town Clerk.

The Town of Acton Board of Selectmen

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Katie Green, Chair

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Owner  
Assistant Assessors

Building Commissioner  
Town Engineer  
Natural Resources Director  
Police Chief  
Historical Commission

Health Director  
Municipal Properties Director  
Town Manager  
Acton Water District